

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO. 159 OF 2018

IN

FIRST APPEAL NO. 103 OF 2018

TANTRA DESIGNS PVT. LTD., REP. BY
VICTOR ALVARES AND ANR.,

... Applicants

Versus

SANJAY MUNNALAL AGARWAL.,

... Respondent

Mr. A. D. Bhobe, Advocate for the Applicants.
Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Kenny,
Advocate for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 12th July 2019

P.C.

This is an application for stay of the impugned judgment and decree dated 19.04.2018 passed by the learned Civil Judge, Senior Division, at Vasco da Gama, thereby decreeing the suit of the respondents for specific performance of a contract of sale in respect of the suit flat bearing No.B-4 admeasuring 70 square metres. While decreeing the suit for specific performance, the learned Trial Court has directed the appellants(defendants) to pay a sum of Rs.2,00,000/- along with interest thereon at the rate of 21% per annum from the date of filing of the suit till realisation. This is granted as a compensation on account of mental tension and agony suffered by the respondent/plaintiff.

2. I have heard Mr. Bhobe, the learned Counsel for the applicants and Mr. S. D. Lotlikar, the learned Senior Counsel for the respondent.

3. Mr. Bhobe, the learned Counsel for the applicants, on instructions, states that the applicants shall comply with the monetary part of the decree within a period of four weeks from today.

4. Mr. S. D. Lotlikar, the learned Senior Counsel for the respondent has submitted that inspite of payment of the entire consideration, the Sale Deed in respect of the suit flat is not executed in favour of the respondent and the applicants are using the said flat for purpose of hotel facility which aspect is denied by the learned Counsel for the applicants. Mr. Lotlikar, the learned Senior Counsel for the respondent, states that the applicants are also liable to pay the mesne profits as the applicants are in possession of the suit flat and they are using the same for commercial purpose.

5. For the present, the issue is only of the stay of the impugned judgment and decree and the conditions upon which stay can be granted. The impugned judgment and decree has not granted any past mesne profits. However, the applicants would be at liberty

to file appropriate application based on the decision of the Supreme Court in the case of ATMA RAM PROPERTIES (P) LTD. VS. FEDERAL MOTORS PVT. LTD. (2005) 1 SCC 705. If such application is filed, the same shall be decided on its own merits and in accordance with law.

6. In the result, the following order is passed :

ORDER

(i) The application is allowed.

(ii) The impugned Judgment and Decree to the extent of directing the execution of the Sale Deed in respect of the suit flat is hereby stayed pending disposal of the appeal subject to the applicants complying with the monetary part of the Decree in terms of clause (c) of the operative order within a period of four weeks from today.

(iii) The amount to be deposited before this Court.

(iv) Liberty to the applicants to file appropriate application based on the decision of the Supreme Court in the case of ATMA RAM PROPERTIES (Supra), if so advised.

(v) The Civil Application is disposed off.

C. V. BHADANG, J.

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